# Dato' Hj Jahaya bin Ibrahim v Kerajaan Negeri Selangor & Ors

HIGH COURT (SHAH ALAM) — SUIT NO 22NCVC-27–01 OF 2016
AMELIA TEE J
21 MARCH 2018

*Land Law — State land — Alienation by state authority — Plaintiff applied to be registered as proprietor of part of leasehold land — Whether plaintiff entitled to be registered as proprietor of part of leasehold land — Whether defendants had duty to issue new title to plaintiff after expiration of previous title — Whether plaintiff entitled to claim for damages — National Land Code ss 40 & 76*

This was an application by the plaintiff for an order that the plaintiff be registered as the proprietor of 3/4 of a piece of leasehold land located in Kuala Selangor ('the said land') or alternatively, that the defendants to pay the sum of RM450,000 to the plaintiff as damages together with interests and costs. In response, the defendant submitted that whilst the plaintiff had once been registered as the owner of 3/4 of the said land (with Majlis Agama Islam Selangor ('MAIS') holding 1/4 of the said land), however the said land was held under a 50 year lease which had expired on 14 July 2005. Consequently, the said land had reverted to the state on 14 July 2005. It was only in 2007 that the plaintiff had applied for the alienation of the said land in continuation of his previous lease. The defendant's case was that, since the initial lease period had lapsed, the said land had reverted to the state and the plaintiff had no more rights in respect of the said land. The issues for determination were: (a) whether the plaintiff was entitled to be registered as the proprietor of 3/4 of the said land; (b) whether the defendants had the duty or responsibility to issue new title of the said land to the plaintiff; and (c) whether the plaintiff was entitled to claim for the sum of RM450,000.

**Held**, dismissing the plaintiff's claim with costs of RM5,000:

(1) The state authority was vested with the sole right over all unalienated land in the state as provided in s 40 of the National Land Code ('the Code'). It was clear and obvious that the plaintiff was no longer registered as the leaseholder of 3/4 of the said land after the period of his lease had expired on 14 July 2005. Thus, with effect from 14 July 2005, the said land had reverted back to the State Authority and the plaintiff did not have the right to be registered as the owner of 3/4 of the said land (see para 46(a)).

(2) Section 76 of the Code provided the right for the state authority to dispose of state land for a term not exceeding 99 years or in perpetuity in accordance with the procedure as set out in the Code. Even though MAIS had not applied for the whole of the said land, but the state authority had resolved to alienate the whole of the said land to MAIS. Thus, the answer to issue (b) was in the negative (see para 46(b)).

(3) The plaintiff's alternative claim was unsupported from the point of view of the facts, the evidence or the applicable law. There was no evidence before the court to show that the defendants had used its powers and discretion unreasonably in denying the plaintiff's application for alienation. In totality, the plaintiff had failed to make out its case on a balance of probabilities (see paras 46(c)–47).

**[Bahasa Malaysia summary**

Ini adalah permohonan oleh plaintif untuk perintah bahawa plaintif didaftarkan sebagai pemilik 3/4 daripada sebidang tanah pajakan yang terletak di Kuala Selangor ('tanah tersebut') atau secara alternatif, bahawa defendan-defendan membayar sejumlah wang sebanyak RM450,000 kepada plaintif sebagai ganti rugi bersama dengan faedah dan kos. Dalam menjawab, defendan berhujah bahawa semasa plaintif telah didaftarkan sebagai pemilik 3/4 daripada tanah tersebut (dengan Majlis Agama Islam Selangor ('MAIS') memegang 1/4 daripada tanah tersebut), walau bagaimanapun tanah tersebut dipegang di bawah 50 tahun pajakan yang tamat pada 14 Julai 2005. Akibatnya, tanah tersebut telah kembali kepada kerajaan negeri pada 14 Julai 2005. Hanya pada tahun 2007 plaintif telah memohon untuk pemberian milik terhadap tanah tersebut dalam penerusan dengan pajakannya terdahulu. Kes defendan adalah bahawa, memandangkan tempoh pajakan permulaan telah luput, tanah tersebut telah kembali kepada kerajaan negeri dan plaintif tidak mempunyai apa-apa hak lagi berkaitan tanah tersebut. Isu-isu untuk penentuan adalah: (a) sama ada plaintif berhak didaftarkan sebagai pemilik terhadap 3/4 tanah tersebut; (b) sama ada defendan-defendan mempunyai kewajipan atau tanggungjawab untuk mengeluarkan hakmilik baru tanah tersebut kepada plaintif; dan (c) sama ada plaintif berhak untuk menuntut bagi jumlah RM450,000 tersebut.

**Diputuskan**, menolak tuntutan plaintif dengan kos sebanyak RM5,000:

(1) Pihak berkuasa negeri diletakhakkan dengan hak tunggal ke atas kesemua tanah yang tidak diberi milikan di dalam negeri seperti yang diperuntukkan dalam s 40 Kanun Tanah Negara ('Kanun'). Ia adalah jelas dan nyata bahawa plaintif tidak lagi berdaftar sebagai pemegang pajakan 3/4 daripada tanah tersebut selepas tempoh pajakannya telah tamat pada 14 Julai 2005. Oleh itu, berkuat kuasa mulai 14 Julai 2005, tanah tersebut telah kembali semula kepada pihak berkuasa negeri dan plaintif tidak mempunyai hak untuk didaftarkan sebagai pemilik 3/4

tanah tersebut (lihat perenggan 46(a)).

(2) Seksyen 76 Kanun memperuntukkan hak untuk pihak berkuasa negeri melepaskan tanah negeri untuk tempoh tidak melebihi 99 tahun atau selama-lamanya mengikut prosedur seperti yang ditetapkan di dalam Kanun. Walaupun MAIS tidak memohon untuk keseluruhan tanah tersebut, tetapi pihak berkuasa negeri telah berniat untuk memberi milik keseluruhan tanah tersebut kepada MAIS. Oleh itu, jawapan kepada isu (b) adalah dalam negatif (lihat perenggan 46(b)).

(3) Tuntutan alternatif plaintif tidak disokong daripada poin pandangan fakta, keterangan atau undang-undang yang beraplikasi. Tidak terdapat keteragan di hadapan mahkamah untuk menunjukkan bahawa defendan-defendan telah menggunakan kuasa dan budi bicaranya dengan tidak munasabah dalam menafikan permohonan plaintif untuk pemberian milik. Secara keseluruhannya, plaintif telah gagal untuk membuat kesnya atas imbangan kebarangkalian (lihat perenggan 46(c)–47).]

**Notes**

For cases on alienation by state authority, see 8(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 5581–5583.

**Cases referred to**

*Nanyang Development (1966) Sdn Bhd v How Swee Poh* [1970] 1 MLJ 145, FC (refd)

*North East Plantations Sdn Bhd lwn Pentadbir Tanah Daerah Dungun & satu lagi* [2011] MLJU 1529; [2011] 4 CLJ 729, FC (folld)

*Tenaga Nasional Bhd v Perwaja Steel Sdn Bhd* [1995] 4 MLJ 673, HC (refd)

**Legislation referred to**

Evidence Act 1950 s 101
Federal Constitution
National Land Code ss 40, 41, 42, 46, 76, 78(3), Form 5A

*Siti Fatimah bt Ali Asgar (Adnan bin Abdul Rahim and HY Lee with him) (Azman & Affendy) for the plaintiff.*

*Wan Norazimi bt Kassim (Legal Advisor, Selangor Legal Advisor's Office) for the defendants.*

**Amelia Tee J:**

**[1]** The plaintiff, Datuk Hj Jahaya bin Ibrahim, claims from the defendants, Kerajaan Negeri Selangor ('the first defendant'), Pengarah, Pejabat Tanah dan Galian ('the second defendant') and Pentadbir Tanah, Pejabat Tanah dan Daerah Kuala Selangor ('the third defendant') for an order that the plaintiff be

registered as the proprietor of 3/4 of a piece of leasehold land held under PM 205, Lot 651 Telok Piah Kuala Selangor, Mukim Kuala Selangor, Selangor Darul Ehsan measuring 3 ekar 0 rood, 19 pole ('the said land') in the registered document of title, or alternatively, that the defendants do pay the plaintiff a sum of RM450,000 as damages together with interests and costs.

**[2]** The plaintiff's claim is disputed by the defendants on the basis that the plaintiff's lease of the said land had expired on 14 July 2005 and that after that date possession of the said land had reverted to the state government. Thus the plaintiff had no further rights to the said land after that date.

**[3]** At the close of hearing, the court had dismissed the plaintiff's claim against the defendants with costs of RM5,000. Being dissatisfied with the afore-stated decision, the plaintiff now appeals against the said decision.

THE PLAINTIFF'S CASE

**[4]** The plaintiff, Datuk Hj Jahaya bin Ibrahim, testified that he had brought this suit against the defendants because he felt aggrieved and ill-treated with the defendants for failing to register him as as owner of a 3/4 share of the said land. He claimed that he was registered as the lesee of a 3/4 share of the said land on 27 May 2003 and had applied for, and handed over to the third defendant his application, for the said land. He claimed that he had complied with all the requirements of the National Land Code and the rules but had received no feedback from the defendants about the outcome of his application.

**[5]** During cross-examination, the plaintiff admitted that he could not remember the date of his application although he was certain that he had handed over the application form to the third defendant. When queried by learned defence counsel as to the purpose for his application, the plaintiff had to admit that his application was made because the lease period had expired.

**[6]** As such, the plaintiff had told the court that he was greatly shocked when he found out that the defendants had not alienated the land to him but that it was the Maljis Agama Islam Selangor ('MAIS') who had been given that 3/4 share of the said land.

**[7]** The plaintiff complains that MAIS had never applied for the 3/4 share of the said land but had only applied for its own 1/4 share of the said land. The plaintiff told the court that he had sent a letter to MAIS dated 24 August 2007 expressing his intention to buy the 1/4 share of the said land which was held by MAIS (see p 13 of Bundle AB). The plaintiff had received a response from MAIS to the effect that the plaintiff's application to buy their 1/4 share of the

land was under consideration and the plaintiff would be informed of their decision in due course (see p 12 of AB).

**[8]** The plaintiff explained that he had occupied the said land for some 11 years having bought the same from Puan Zainah bt Abdul Karim on or about 2003 at a price of RM800,000. The change in lease ownership can be seen in the endorsement at pp 22–23 of Bundle AB. He had planted oil palms on the land and there was also a residentaial building.

**[9]** As such, the plaintiff states that he will suffer loss if he was not alienated the land that he applied for.

**[10]** During cross-examination, the plaintiff was referred to a letter to him from the third defendant dated 31 May 2012 informing him that his application was rejected. However, the plaintiff claims that he had never received the said letter.

**[11]** The plaintiff further claimed during cross-examination that although he had been occupying the said land since 2003, he did not know the period of his lease. However when referred to the Borang 5EK Pajakan Mukim at p 26 of AB, he agreed that he had seen that document before and the period of his lease was 50 years and expiring on 14 July 2005. In light of the foregoing the plaintiff had to agree that *as at the dates of the applications at pp 9 and 10 of AB (3 August 2007 and 5 February 2008), the lease period had already expired.*

THE DEFENDANTS' CASE

**[12]** The defendants called two witnesses in support of their case. *Nasrul Faiz bin Firdaus* (DW1) had been working with the Unit Penguatkuasaan of Pejabat Tanah dan Daerah Kuala Selangor since 3 April 2010. With effect from 19 December 2013, he had been transferred to Unit Pelupusan where he is now the Penolong Pegawai Daerah (Pelupusan).

**[13]** DW1 testified that he was responsible for all matters relating to the alienation of land under s 76 of the National Land Code and the supervision of records pertaining to any alienation thereunder.

**[14]** DW1 testified that applications for the alienation of the said land were received from Majlis Agama Islam Selangor ('MAIS') and the plaintiff, Datuk Hj Jahaya bin Ibrahim on 5 February 2008. MAIS had applied for 1/4 of the said land whereas the plaintiff had applied for 3/4 of the said land. He agreed that up until 1 February 2012, the said land had not been alienated to any party. The extract from the decision of the meeting of the Majlis Mesyuarat Kerajaan Negeri Selangor Darul Ehsan Ke 4/2012 (pp 15–16 of AB) would

show the decision to alienate the said land to MAIS. In line with that decision, the previous Penolong Pegawai Daerah, Pn Norasyikin bt Muhammad Shairi, had issued a letter dated 31 May 2012 (AB p 11) to the plaintiff rejecting his application for alienation of the said land.

**[15]** DW1 was asked during cross-examination about the delay of about four years in making the decision on alienation of the said land. His response was that there were certain processes to be followed by the land office for the consideration of the relevant authorities. He denied that the delay was made on purpose.

**[16]** During cross-examination, DW1 was referred to the document at p 22 of AB. He disagreed that up to 18 November 2013, MAIS and the plaintiff were still the registered owners of the said land. He pointed out that this document was actually the *Carian Rasmi Hakmilik Batal*.

**[17]** DW1 was also cross-examined at some length as regards pp 2–6 of AB which was the application by MAIS for alienation of the said land. Whilst agreeing that the form was undated, DW1 denied that the form was not fully completed. According to him, the basic information ('matlumat asas') had been filled in and the other columns which were empty would only need to be filled if the applicant was a company. Although agreeing that item 10 had not been filled up, however he testified that the information provided by MAIS was true and accurate.

**[18]** The defendants' other witness is Rosni bt Kimin ('DW2'). She has been the Timbalan Pendaftar Hakmilik Negeri Selangor since 24 November 2008. According to DW2, after the earlier lease of the said land had expired, the land had reverted back and become state land. On 1 February 2012, the Majlis Mesyuarat Kerajaan Negeri Selangor Darul Ehsan had approved the alienation of the said land to MAIS. The lease is a 99 year lease expiring on 21 October 2114.

**[19]** Thus, in summary, the defence of the defendants is that whilst the plaintiff had once been registered as the owner of 3/4 of the said land (with MAIS holding 1/4 of the land), however the land was held under a 50 year lease which had expired on 14 July 2005. As such, the said land had reverted back to the state on 14 July 2005. It was only in 2007 that the plaintiff had applied for the alienation of the said land in continuation of his previous lease. This meant that the plaintiff had been negligent in failing to take care of his own interests and had failed to take the necessary steps to apply for an extension of his lease until it had expired.

**[20]** As such it is the defendants' case that since the initial lease period had lapsed, the said land had reverted back to the state and the plaintiff had no more rights in respect of the said land.

AGREED ISSUES

**[21]** The issues to be tried as agreed between the parties are as follows:

1. Sama ada Plaintif berhak untuk didaftarkan sebagai Pemilik berdaftar 3/4 bahagian di hak milik Tanah pajakan tersebut?
2. Sama ada Defendan-Defendan mempunyai tugas atau kewajipan untuk mengeluarkan hak milik terkini kepada Plaintif?
3. Sama ada Plaintif berhak untuk menuntut gantirugi bagi jumlah wang sebanyak RM4,500,000-00 (Ringgit Malaysia Empat Juta Lima Ratus Ribu) ke atas kerugian akibat kegagalan pihak Defendan-Defendan untuk mendaftarkan Plaintif sebagai pemilik berdaftar untuk 3/4 bahagian Tanah pajakan tersebut dan mengeluarken hak milik terkini.

EVALUATION AND FINDINGS

**[22]** In coming to a conclusion in this case, the court has carefully considered the evidence adduced by the parties as well as the documentary evidence tendered before the court. Regard is also had to the written submissions and authorities that were filed by both parties.

**[23]** The court has considered the plaintiff's submission that he was entitled to be registered as owner of 3/4 of the said land. According to him, he had bought the land in 2003 at a price of RM800,000. His complaint is that the defendants had failed to register him as the registered owner of 3/4 of the said land and that by such action, he had been deprived of his right to the 3/4 share of the said land.

**[24]** The plaintiff takes the position that even though the period of his lease had expired on 14 July 2005, he had a *reasonable expectation* as the leasehold owner of 3/4 of the said land, that the defendants would allow his application and alienate the said land to him.

**[25]** The plaintiff testified that he had applied for alienation of the said land twice, once on 3 August 2007 and secondly through a joint application with MAIS on 5 August 2008. The joint application was made because the plaintiff and MAIS were joint owner of the leased land.

**[26]** The court notes that there was no admission by MAIS as regards whether it had applied for alienation of the whole piece of land. The court further notes the plaintiff's claim that it was shocked by the alienation of the entire piece of land to MAIS which it claimed was against the provisions of s 76 of the National Land Code as there was no application by MAIS.

**[27]** In support of his case, the plaintiff had referred the court to a number of authorities. Reference was made to the case of *Tenaga Nasional Bhd v Perwaja Steel Sdn Bhd* [1995] 4 MLJ 673, where at p 676 the High Court had decided as follows:

> Under s 101(1) of the Evidence Act 1950, whoever desires the court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist. In other words, the plaintiff must prove such facts as the plaintiff desires the court to give judgment as to its right to claim against the defendant or the defendant's liability to pay the plaintiff. The burden of proof is on the plaintiff. In order to succeed here, the plaintiff must prove its claim affirmatively.

**[28]** And in the Federal Court case of *Nanyang Development (1966) Sdn Bhd v How Swee Poh* [1970] 1 MLJ 145, His Lordship Azmi LP had this to say about the burden of proof:

> That rule means 'the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it: for a negative is usually incapable of proof'.

**[29]** Whilst the plaintiff submits that the defendants had failed to call any representative from MAIS to testify as to the staus of their application as at 5 February 2008 and that the third defendant's failure to serve the 31 May 2012 letter on the plaintiff meant that the plaintiff was deprived of the opportunity to appeal to the defendants to review their decision re the plaintiff's application, however the court is of the considered view that the very authorities as cited and relied upon by the plaintiff would place the burden on the plaintiff to show that he was entitled to the alienation of the said land after his lease had expired.

**[30]** The court has taken note of the plaintiff's many grouses. They include:

(a) that the defendants' action in not alienating the said land to him had deprived him of his rights over the said land;

(b) that the third defendant had failed to inform him of the status of his application as there was no proof that the third defendant had sent to him a copy of their letter dated 31 May 2012 (p 11 of AB);

(c) vide his letter dated 24 August 2007 (p 13 of AB), the plaintiff had voiced to MAIS his intention of purchasing MAIS's 1/4 share of the said land and MAIS had responded that the plaintiff's offer was under consideration;

(d) although the plaintiff was late in his application for alienation, however, MAIS too was late in its application. As such, the issue of delay should not be considered by the court;

(e) that the defendants were negligent and had failed to carry out their duties and responsibilities in considering the plaintiff's application;

(f) that the plaintiff had suffered losses when his application was rejected as he had expended monies to plant oil palm and had built a house on the leased land;

(g) that the alienation to MAIS was made on 22 October 2015, almost eight years after their application was made;

(h) that the defendants had the power and discretion to return the said land to him on lease. However, the defendants had failed to properly utilise its powers and discretion when it had failed to consider the plaintiff's efforts in working on the said land;

(i) that the entire alienation process was not carried out in line with the provisions of the National Land Code, was unfair and had prejudiced the plaintiff; and

(j) that the plaintiff had never failed to pay his quit rent for the said land and had not breached any of the conditions for the use of the said land.

**[31]** The court had duly considered the submissions of the defendants that based on their records, the plaintiff had previously been registered with leasehold over 3/4 of the said land whilst the remaining 1/4 was registered in the name of MAIS. The lease period was for 50 years and had *expired on 14 July 2005*. That would mean that the said land would have reverted back to the state on 14 July 2005 and the plaintiff would no longer be the registered lessee over the 3/4 portion of the said land with effect from that date.

**[32]** The defendants did not dispute that the third defendant had on 5 February 2008 received applications for the alienation of the said land under s 76 of the National Land Code from both the plaintiff as well as MAIS. The first defendant through the Majlis Mesyuarat Kerajaan Negeri (MMKN) ke 4/2012 had on 1 February 2012 considered the applications and approved the application of MAIS for purposes of agriculture and had rejected the application of the plaintiff.

**[33]** And the third defendant had vide its letter dated 31 May 2012 duly informed the plaintiff of the result of his application. A

**[34]** This is a case pertaining to alienation of land and as such the provisions of the National Land Code are of paramount importance. For ease of reference, the relevant provisions of the National Land Code are reproduced below. Section 40 of the National Land Code which provides that all property in land shall vest in the state quthority reads as follow: B

40 Property in State land, minerals and rock material

There is and shall be vested solely in the State Authority the entire property in — C

(a) all State land within the territories of the State;

(b) all minerals and rock material within or upon any land in he State the rights to which have not been specitically disposed of by the State Authority. D

**[35]** Section 41 of the National Land Code deals with the powers of the state authority to deal with land *or reversion of land*. Section 41 reads as follows:

41 Powers of disposal of State Authority, and rights in reversion, etc E

Without prejudice to its powers and rights under any other written law for the time being in force, the State Authority shall have —

(a) all the powers of disposal conferred by section 42 with respect to —

(i) property vested in it under section 40, F

(ii) reserved land, and

(iii) mining land,
which powers shall be exercised in such manner and to such extent as is authorised by the provisions of this Act, and not otherwise; and; G

(b) all the rights in reversion and other similar rights conferred on it by section 46.

**[36]** Since s 41 of the Code talks about the state authority having the rights in reversion as conferred by s 46, reference is now made to s 46 of the National Land Code which reads as follows: H

46 Reversion, etc to the State Authority

(1) Without prejudice to the provisions of any other written law for the time being in force, alienated land shall revert to and vest in the State Authority in the following circumstances — I

(a) upon the expiry of the term (if any) specified in the document of title thereto;

(b) ...

(c) ...

**[37]** The power of disposal of land is provided in s 42 of the National Land Code which provides as follows:

42 Powers of disposal

(1) Subject to sub-section (2), the State Authority shall have power under this Act —

(a) to alienate State land in accordance with the provisions of section 76;

(b) ...

**[38]** The court has considered the plaintiff's claim that he should be registered as the registered owner of 3/4 of the said land or alternatively that he should be paid compensation because he felt victimised by the defendants. To a question relating to this in his witness statement, the plaintiff had replied as follows:

Q: Boleh Encik jelaskan kepada Mahkamah mengapa Encik membawa tindakan ini terhadap Defendan-Defendan?

J: Saya membawa tindakan ini terhadap Defendan-defendan kerana saya rasa terkilan dan teraniaya dengan tindakan Defendan-Defendan yang gagal mendaftarkan saya sebagai Pemilik 3/4 bahagian di bawah hakmilik tanah pajakan.

**[39]** The court finds that the plaintiff was well aware that the land that he had bought was on a 50 year lease which would expire on 14 July 2005. He had applied for a new lease/extension of the lease well after the expiry date.

**[40]** The learned federal counsel for the defendants had referred the the Federal Court case of *North East Plantations Sdn Bhd lwn Pentadbir Tanah Daerah Dungun & satu lagi* [2011] MLJU 1529; [2011] 4 CLJ 729 for the consideration of the court. In that case, the appellant had applied to the state government for alienation of 11 lots of land. The application was approved and three lots of land were issued with documents of title upon the appellant paying the premium. For the remaining eight lots of land, the premium amounted to RM2,052,465.30 and Form 5A was issued to the appellant for payment of the premium. The appellant attempted to pay the premium but the first respondent refused to accept. The second respondent then issued an order that due to the change in the government and state administration, all land administration matters including registration of titles were adjourned. The appellant again tried to pay the premium but was informed that the State

Executive Council had decided to reject the payment of the premium and had consequently revoked the land that was approved to the appellant for the said lots. A

**[41]** The appellant filed an application in the High Court for judicial review. The application was dismissed. A subsequent appeal to the Court of Appeal was also dismissed by a majority decision. The appellant was granted leave to appeal to the Federal Court in respect of three questions of law, namely: B

(a) whether the NLC confers power on a state government to revoke permission for alienation granted by a previous state government; C

(b) if the state government had such power, whether it could use the said power without taking into account the principles of natural justice, the right to be heard, arbitrariness, unreasonableness, good faith and legitimate expectation; and D

(c) if the state government had the power to make a new policy pertaining to the said permission, whether the enforcement of the said new policy could be applied to adversely affect and prejudice the advantage or interest that the registered owner had with good faith acted on pursuant to the previous policy. E

**[42]** The court notes that in the case of *North East Plantations Sdn Bhd*, His Lordship Alauddin Mohd Sheriff PCA had held, inter alia, as follows: F

(a) the power to refuse the payment submitted by the appellant was impliedly stated under s 78(3) of the National Land Code. The section clearly provides that so long as the land was not registered in the appellant's name, it was still owned by the state government. This means that the state government had the power to revoke the previous approval and reject the payment made by the appellant; G

(b) there was no provision in the National Land Code that prevented the state authority from reviewing a previous decision. The High Court judge was satisfied that the ground given which was to maintain the sustainability of the forest was not only reasonable but a good and appropriate policy to ensure the State of Terengganu's future. The principles of justice were not only applicable to the appellant but also to the government and the people of Terengganu; H

(c) the High Court judge's decision stating that the approval granted to the appellant did not confer any right of reasonable expectation as at the time of revocation the land was still state land and no registered title had been conferred on the appellant; I

(d) just because the appellant's application for alienation was approved, it did not mean that the state government was bound contractually and that it could not decide to revoke the approval given. According to the Federal Constitution and s 40 of the National Land Code, 'land' belonged to the state and as the owner it had the right to make any decision that it thought appropriate or reasonable; and

(e) the appellant did not have any legal rights or beneficial rights towards the eight lots of land even though approval was granted. The appellant could only obtain rights if the said lands were registered in its name. As long as the registration was not done, the said lands still belonged to the state government.

**[43]** The court notes that although the plaintiff had submitted that the defendants had failed to exercise its powers and discretion in a reasonable manner, he had failed to discharge his burden of proof as provided under s 101 of the Evidence Act 1950 which reads as follows:

> 101 Burden of proof
>
> (1) Whoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist.

**[44]** The court finds that in this case, the plaintiff has failed to put forth any evidence that the defendants had failed to properly exercise their powers or discretion in not alienating the said land to him.

**[45]** The court further finds that the defendants' alienation of the said land to MAIS was proper and according to law. Since the earlier leasehold of 3/4 of the land granted to the appellant had lapsed, the said land had reverted back to the state government which had the absolute power to deal or dispose of the land as it deems fit. The court finds that the plaintiff did not have any right to insist that the first defendant do alienate the said land to him. The court finds that the first defendant had the absolute power of disposal of land which had not yet been alienated which had had reverted back to the state.

**[46]** Thus in conclusion and in answer to the issues that are raised in this case, the court finds as follows:

(a) *sama ada plaintif berhak untuk didaftarkan sebagai pemilik berdaftar 3/4 bahagian di hak milik tanah pajakan tersebut?*

In respect of this issue, the court finds that the state authority is vested with the sole right over all unalienated land in the state as provided in s 40 of the National Land Code. The court finds it clear and obvious that the plaintiff was no longer registered as the leaseholder of 3/4 of the said land

after the period of his lease had expired on 14 July 2005.

Section 46 of the National Land Code provides that alienated land shall revert to and vest in the state authority, inter alia, upon the expiry of the term specified in the document of title. As such, the court finds that with effect from 14 July 2005, the said land had reverted back to the state authority and the plaintiff did not have the right to be registered as the owner of 3/4 of the said land.

(b) *sama ada defendan-defendan mempunyai tugas atau kewajipan untuk mengeluarkan hak milik terkini kepada plaintif?*

The court finds that s 76 of the National Land Code gives the right to the state authority to dispose of state land for a term not exceeding 99 years or in perpetuity in accordance with the procedure as set out in the Code. Notwithstanding that MAIS may not have applied for the whole of the said land, however the state authority had resolved to alienate the whole of the said land to MAIS.

In light of the fact that the defendants had alienated and registered the whole of the said land in the name of MAIS, it is clear that the answer to issue (b) is in the negative.

(c) *sama ada plaintif berhak untuk menuntut gantirugi bagi jumlah wang sebanyak RM4,500,000 ke atas kerugian akibat kegagalan pihak defendan-defendan untuk mendaftarkan plaintif sebagai pemilik berdaftar untuk 3/4 bahagian tanah pajakan tersebut dan mengeluarkan hak milik terkini.*

In this case, the plaintiff had made an alternative claim against the defendants for compensation of RM4,500,000 for losses resulting from the failure of the defendants to register him as the owner of 3/4 of the said land. The plaintiff claims that the defendants had failed to exercise its discretion reasonably and to consider that he had planted palm oil on the land as well as constructed a building thereon.

The court is of the considered view that the plaintiff's alternative claim is unsupported from the point of view of the facts, the evidence or the applicable law. There is no evidence before the court to show that the defendants had used its powers and discretion unreasonably in denying the plaintiff's application for alienation.

In this regard, the court refers to the decision in *North East Plantations Sdn Bhd* where the Federal Court had held as follows:

> The High Court judge's decision stating that the approval granted to the appellant did not confer any right of rerasonable expectation as at the time of the revocation the land was still State land and no registered title had been conferred on the appellant was correct and appropriate. The majority decision of the Court of Appeal was also right when stating 'Whether or not

A the doctrine of legitimate expectation applies depends on the facts oif each case, it cannot and should not override the express statutory power vested in the State Authority'.

The court is also reminded of the provisions of s 48 of the National Land Code which states that:

B

> No title to State land shall be acquired by possession, unlawful occupation or occupation under any license for any period whatsoever.

Based on the foregoing, the court finds that the plaintiff's claim that he be awarded compensation for the palm oil estate and building on the said land to be without merit. At the time of the alienation to MAIS, the state government was the absolute owner of the said land and the alienation to MAIS was in order and in accordance with the provisions of the National Land Code.

C

D CONCLUSION

**[47]** After considering the totality of the evidence adduced by the parties, the court finds that the plaintiff has failed to make out its case on a balance of probabilities. The law is clear that property in land and the power of disposal of land vests with the state authority.

E

**[48]** The court is bound by the clear provisions of the National Land Code and the Federal Court decision in *North East Plantations Sdn Bhd* which found that land remained state land unless it has been alienated and registered in the name of a party inder the provisions of the National Land Code.

F

**[49]** In light of the reasons as stated above, the court had dismissed the plaintiff's claim with costs of RM5,000.

G

*Plaintiff's claim dismissed with costs of RM5,000.*

Reported by Dzulqarnain Ab Fatar

H

I